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Statement of
Caroline Fredrickson
Director,
Washington Legislative Office
American Civil Liberties Union
Before the
Subcommittee on National Security, Emerging Threats, and
International Relations
Committee on Government Reform
United States House of Representatives
Concerning
Setting Post-9/11 Investigative Priorities
at the Bureau of Immigration and Customs Enforcement

March 28, 2006

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Chairman Shays and distinguished members of the Subcommittee, on behalf of the American Civil Liberties Union, and its hundreds of thousands of activists, members and fifty-three affiliates nationwide, I am pleased to appear before you today to present our views on excluding people from this country based on their political beliefs.

You invited me here to help this committee understand how the resources of the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE) can be used more effectively in the interest of national security. As part of that discussion, I will address how we believe DHS and the Department of State have resurrected the discredited practice of ideological exclusion – the practice of denying visas to non-citizens whose politics the government disfavors. Ideological exclusion can occur either when an individual is excluded under a law that is itself directed at ideology, or when a law that is ideology neutral is used to exclude someone with particular ideas. In my testimony, I will focus on one provision of law directed at ideology about which we are particularly concerned (which I will call the ideological exclusion provision), and discuss the federal government's exclusion of Dr. Tariq Ramadan, a Swiss citizen and arguably the most prominent and respected European scholar of the Muslim world.

In 2001, through the USA Patriot ACT, Congress added to the list of aliens ineligible to receive visas those who have used their "position of prominence within any country to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities." Through the REAL ID Act, the ideological exclusion provision now renders inadmissible any alien who has "endorse [d] or espouse [d] terrorist activity or persuade [d] others to endorse or espouse terrorist activity or support a terrorist organization."

While the ideological exclusion provision is ostensibly directed at those who support terrorism, news reports suggest that the government has invoked the provision to exclude and stigmatize prominent critics of U.S. foreign policy – individuals who may have never supported terrorism and in some cases have vocally opposed it, such as Professor Ramadan.

It is our view that it is contrary to fundamental American values regarding freedom of expression, as protected by the First Amendment of the Constitution, for the administration to suppress the exchange of ideas between Americans and people of different national origins and different beliefs simply because they are different. "Ideological exclusion" is a term of art but its impact is real. The federal government is excluding people

to prevent American citizens and residents from participating in conferences or exchanges of ideas with people whose ideas the administration dislikes. I respectfully submit to this committee that attempting to suppress constitutionally guaranteed freedom of speech and freedom of association is not an effective use of ICE resources, nor is it in the best interest of national security.

The ideological exclusion provision has compromised and continues to compromise the interests of U.S. citizens and residents. By regulating, stigmatizing, and suppressing lawful speech, the provision skews and impoverishes academic and political debate inside the United States. It creates artificial barriers between people of our nation and other nations. It deprives Americans of information and debates they need to make responsible and informed decisions about matters of political importance.¹

The USA Patriot Act changed the law in this area to prevent the entry of nationals of other countries who have used their "position of prominence within any country to endorse or to espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities."² Our client, Professor Ramadan, does not endorse, espouse, or persuade others to support terrorism, and he has never done so. To the contrary, he has been a consistent and vocal critic of both terrorism and those who use it.

The ACLU recently filed litigation challenging the exclusion of Tariq Ramadan and the ideological exclusion provision itself. The lawsuit was filed on behalf of the American Association of University Professors, American Academy of Religion, and the PEN American Center, all of which have invited Professor Ramadan to speak in the United States in the upcoming months. They are all being deprived of the opportunity to meet with him, hear his views and engage in debate.

The government revoked Professor Ramadan's visa under the ideological exclusion provision in 2004, preventing him from becoming a tenured professor at the University of Notre Dame, a prominent Catholic university. Until recently, Professor Ramadan lawfully visited the United States to lecture, attend conferences, and meet with other scholars. In August 2004, however, the administration revoked his nonimmigrant visa under the Patriot Act amendments to the Immigration and Nationality Act. The revocation prevented Professor Ramadan from teaching at the University of Notre Dame and more generally from lecturing, attending conferences, and meeting with scholars and other residents in the United States.

Professor Ramadan's scholarship—publishing more than 20 books and 700 articles on issues such as democracy, human rights, and Islam—resulted in Time Magazine naming him one of the most influential people for the 21st Century: "the leading Islamic thinker among Europe's second- and third-generation Muslim immigrants." After September 11, he publicly condemned the attacks, telling fellow Muslims, "Now more than ever we need to criticize some of our brothers [in faith and say] 'You are unjustified if you use the Koran to justify murder.'" While he has been critical of some U.S. policies, he has never endorsed or supported terrorism. After his U.S. visa was revoked, he was invited by staunch American ally British Prime Minister Tony Blair to join a government taskforce to examine the roots of extremism in the U.K.

¹ Complaint for Declaratory and Injunctive Relief, p 24.

² http://www.aclu.org/images/general/asset_upload_file435_24555.pdf, p. 2. 8 U.S.C. § 1182(a)(3)(B)(i)(VI) (2004) (as amended by § 411(a)(1)(A)(iii) of the USA Patriot Act (2001)).

The Bush administration's decision to exclude Professor Ramadan stifles intellectual exchange about Islam and the Muslim world at a time when robust dialogue and debate about America's international policies and commitment to freedom and peace are of extraordinary importance to our nation's future. Unfortunately, this is not the first time our country has limited our First Amendment freedoms, but Congress should take this opportunity to re-examine this policy and its adverse effect on our people and our reputation.

It is widely acknowledged that during the Cold War, both Republican and Democratic administrations used our immigration laws to exclude prominent artists and intellectuals who disagreed with administration policy. I think it is fair to say that these artists did not represent any danger to our national security, any threat to the physical security of the American people. History demonstrates that they were excluded simply because the federal government wanted to prevent U.S. citizens and residents from meeting with them and hearing their ideas.³ The following list gives just a small sample of those scholars, writers, journalists and political figures who were excluded from the United States for ideological reasons since the early days of the Cold War:

- 1952 PIERRE TRUDEAU (Later to become Prime Minister of Canada)
- GRAHAM GREENE (Novelist)
- 1953 JAN MYRDAL (Author)
- 1957 YVES MONTAND (Actor, Singer)
- 1962 GABRIEL GARCIA MARQUEZ (Novelist, Nobel Laureate)
- CARLOS FUENTES (Novelist)
- 1966 PABLO NERUDA (Poet, Nobel Laureate)
- 1969 DORIS LESSING (Novelist) ERNEST MANDEL (Economist)
- 1971 OSCAR NIEMEYER (Architect)
- 1980 DARIO FO (Playwright, Nobel Laureate) and FRANCA RAME (Actress)
- 1982 GENSUIKYO (Japanese Antinuclear Group) and GYOTSU SATO (Buddhist Monk, Leader of Gensuikyo) ANGEL RAMA (Scholar)
- 1983 NINO PASTI (Former NATO Deputy Supreme Commander, Former Italian Senator)
- HORTENSIA BUSSI DE ALLENDE (Widow of Chilean President Salvador Allende)
- 1984 MARITZA RUIZ (Leader of El Salvador's Comadres)
- 1985 FARLEY MOWAT (Novelist)
- 1986 CHOICHIRO YATANI (Professor) PATRICIA LARA (Journalist)
- 1990 JIM HUNTER (Union Leader)
- 2002 JOHN CLARKE (Organizer for the Ontario Coalition Against Poverty)
- 2003 TOKYO SEXWALE and SIDNEY MUFAMADI (African National Congress Activists) plus CARLOS ALZUGARAY TRETO (Scholar, Former Ambassador to the European Union)
- 2004 TARIQ RAMADAN (Scholar, Author) and 61 CUBAN SCHOLARS
- 2005 DORA MARIA TELLEZ (Scholar, Former Nicaraguan Minister of Health) FERNANDO RODRIGUEZ (Human Rights Lawyer)

At the end of the Cold War, the Immigration Act of 1990 eliminated the ideological exclusion provision regarding visitors to this country. But in 2001 the Patriot Act reinstated the power to exclude visitors based on their views, although ostensibly now limited to support of terrorism. The exclusion of Professor Ramadan demonstrates that the provision is

3 <http://www.aclu.org/safefree/general/21211prs20051110.html>.

being construed broadly to deny entry to people who are not suspected terrorists and do not support terrorism, but who disagree with U.S. policies.

Before the passage of the USA Patriot Act, these ideological exclusions were not based on claims of espousing terrorism but on the even more ambiguous provision dating back to 1952 allowing for the exclusion of foreign nationals who espoused "subversive" ideas.

The Immigration and Nationality Act (INA) of 1952 (also known as the McCarran-Walter Act) was a law passed by the United States Congress restricting immigration into the United States. It came into being despite strong disagreement between President Harry Truman and the House and the Senate. Truman in fact vetoed an earlier version of the McCarran-Walter Act, which he regarded as "un-American" and discriminatory.

The fact is that the provision expanded upon by the Patriot Act was born of the ignoble era in which Joseph McCarthy's red-baiting flourished until it was rejected by Congress for its deplorable smear tactics, guilt by association, and chilling of fundamental First Amendment freedoms. It is one thing to exclude terrorists and al-Qaeda operatives, and another to return to allowing the federal government to bar people who criticize U.S. policy. This is certainly reminiscent of McCarthyism. The exclusion provision was promoted by Attorney General John Ashcroft who suggested quite infamously that anyone who criticized the Patriot Act was aiding terrorists. Mr. Ashcroft told the Senate Judiciary Committee, "To those who scare peace-loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists."⁴ His comments were rightly condemned by the Senate Judiciary Committee members and the press.

As Edward R. Murrow so eloquently stated: "We must not confuse dissent with disloyalty. We must remember always that accusation is not proof. We must remember that Americans are not descended from fearful men -- not from men who feared to write, to speak, to associate and to defend causes that were, for the moment, unpopular." I think we would do well to remember that sentiment, at a time like this.

Larry McMurtry, author of the "Brokeback Mountain" screenplay that won an Academy Award, spoke in a similar vein when he testified on behalf of PEN American Center in May 1989 before the Subcommittee on Courts, Intellectual Property, and Administrative Justice of the House Judiciary Committee. He said: "We believe that the ideological-exclusion provisions of the McCarran-Walter Act serve no useful purpose and cause inexcusable damage to individual rights and to the ability of the United States to champion the cause of individual liberties around the world." That remains true today.

Therefore, while we await a ruling from the U.S. District Court in Professor Ramadan's case, we are pursuing a Freedom of Information Act (FOIA) request to learn more about the administration's use of this provision to deny admission to other scholars.

The ACLU filed the FOIA request in March 2005 to gather more information about the government's use of the Patriot Act's ideological exclusion provision as well as the government's practice of ideological exclusion more generally -- a practice that has led to the recent exclusion of Dora María Telléz, a Nicaraguan scholar who had been offered a position at Harvard University. Ms. Telléz was a leader in the 1979 movement that overthrew Nicaraguan dictator Anastasio Somoza, and due to the denial of a U.S. visa, she was forced to turn down a position as the Robert F. Kennedy visiting professor in Latin American studies at Harvard University. She had traveled to the United States several times

⁴ "Ashcroft Defends Antiterror Plan and Says Criticism May Aid Foes," New York Times, Dec. 7, 2001

in the past on personal visits and business trips, and said she was shocked when officials told her she was denied entry because of supposed involvement with terrorism.

Similarly, in October 2004, 61 Cuban scholars, who were scheduled to attend the Latin American Studies Association's international congress, were denied entry less than two weeks before the congress convened. According to the State Department, the denials were in keeping with the Bush administration goal of hastening a democratic transition in Cuba. Back in 2002, John Clarke, an organizer for the Ontario Coalition Against Poverty, was stopped at the customs booth at the U.S.-Canada border while on his way to a speaking engagement in Michigan. After officials checked his identification, Clarke was asked if he was opposed to the "ideology of the United States." Officials then searched his car and Clarke was forced to wait until a State Department agent drove up from Detroit to interrogate him. He was turned away after five hours.

These are just a few of a growing number of examples. When the government complies with our FOIA request, we will undoubtedly learn of more such cases. In November 2005, the ACLU filed a lawsuit to enforce our FOIA request.⁵ The case is pending and the ACLU has only received some of the documents it requested.

It is the ACLU's view that the State Department and other government agencies are illegally withholding records concerning the practice of excluding foreign scholars and other prominent intellectuals from the United States because of their political views. We believe strongly that the right to hear a full range of ideas and opinions is a vital part of American democracy. It is part of the vision of American in promoting the virtues of democracy abroad. Our government should not be in the business of censoring ideas.

Freedom of expression and association are bedrock American values. Eight-seven years ago Justice Oliver Wendell Holmes captured these values in the metaphor of a "marketplace of ideas."⁶ As Justice Holmes wrote: "But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment."

It is a fundamental tenet of our society that protecting free expression of ideas in our democracy outweighs any theoretical benefit of censorship. And the ideological exclusion of scholars from this country based on their beliefs—not based on any proof of aiding terrorists—is a physical embodiment of censorship. It is a censorship that deprives our people of dialogue with those whose views may be different but whose views may make our people more tolerant of others and make others more understanding of our culture and American ideals. The Supreme Court affirmed the right to receive ideas.⁷ The Court wrote in 1972: "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail ... it is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged ..."

During the heyday of the House Un-American Activities Committee, countless Americans were blacklisted. And the State Department blacklisted foreign nationals for their political beliefs as well. Blacklisting now seems to be in vogue, but this time it's not the State Department and it's not about communism. It's ICE and it does not even appear to

⁵ http://www.aclu.org/images/general/asset_upload_file988_21801.pdf

⁶ *Abrams v. United States*, 250 U.S. 616 (1919).

⁷ *Kleindienst v. Mandel*, 408 U.S. 753 (1972)

be focused on the letter of the law as amended by the Patriot Act. Our precious anti-terrorism resources, including those of ICE, should be focused on preventing another attack – not on arbitrarily or capriciously excluding people who pose no threat to our government, no threat to our people.

Conclusion

The suppression of speech on the basis of its content is not made consistent with American values simply because the government is using immigration law, rather than some other mechanism, as the instrument of censorship. To the contrary, every court to confront the issue squarely has held that the content of a visitor's speech cannot by itself supply a legitimate and bona fide reason for exclusion. And it's not just contrary to our values as a nation; it's simply not effective to pursue a policy of censorship at our borders as a matter of national priority and national security.

Thank you for the opportunity to testify on this important issue today.

